



OFFICE OF THE ATTORNEY GENERAL - STATE OF TEXAS  
JOHN CORNYN

January 10, 2001

Ms. Sara Hardner Leon  
Attorneys and Counselors  
Powell & Leon, L.L.P.  
808 West Avenue  
Austin, Texas 78701-2208

OR2001-0108

Dear Ms. Leon:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 143059.

The Alba-Golden Independent School District (the "district"), which you represent, received two requests for information pertaining to a school assembly held August 22, 2000. The first request seeks the Superintendent's report to the Board of Trustees, and the second request seeks the "final report" presented to the board members. You indicate that the only information responsive to the requests is contained in a one page letter from the Superintendent to the district's legal counsel that was also provided to the Board of Trustees. You have submitted the document at issue for our review, and you assert that this information is excepted from disclosure under sections 552.101 and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You contend the information at issue is subject to the attorney-client privilege and is therefore excepted from disclosure under sections 552.101 and 552.107. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Although this office at one time applied the attorney-client privilege under the statutory predecessor to section 552.101, we today believe that the privilege is properly asserted in the context of the Act only under section 552.107(1). *See* Open Records Decision No. 575 at 2 (1990) (section 552.101 does not encompass discovery privileges). Section 552.107(1) excepts information from disclosure if it is information that the attorney general or an attorney of a political subdivision is

prohibited from disclosing because of a duty to the client under the Texas Rules of Evidence or the Texas Disciplinary Rules of Professional Conduct. *See* Gov't Code § 552.107(1). This exception does not apply to all client information held by a governmental body's attorney; rather, it excepts from public disclosure only "privileged information," i.e., communications that are made to the attorney *in confidence* and in furtherance of rendering professional legal services or that reveal the attorney's legal opinion or advice. Open Records Decision Nos. 589 at 1(1991), 574 at 3 (1990), 462 at 9-11(1987). Based on your arguments and representations as well as our review of the document at issue, we believe you have demonstrated that the document is subject to the attorney-client privilege. The district may therefore withhold this information pursuant to section 552.107(1).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

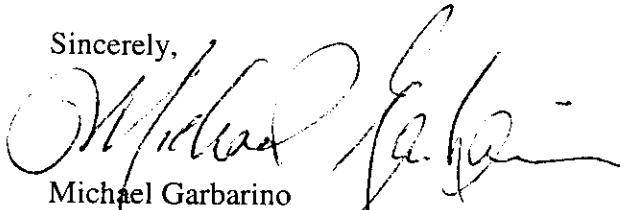
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael Garbarino  
Assistant Attorney General  
Open Records Division

MG/seg

Ref: ID#143059

Encl. Submitted documents

cc: Mr. Ron Burge  
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